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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 08, 2020

SEAN F. McAVOY, CLERK

10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 2:20-CR-175-RMP

14 Plaintiff,

INDICTMENT

15 v.

16 Vio: 42 U.S.C. § 7413(c)(1)
17 Violation of Clean Air Act
18 Asbestos Work Practice Standards
19 (Counts 1 - 3)

ALEXANDER BORYS MISCHENKO,

20 Defendant.

21 42 U.S.C. § 7413(c)(1)
22 Violation of Clean Air Act
23 Asbestos Waste Disposal Standards
24 (Counts 4 - 5)

25 42 U.S.C. § 7413(c)(2)(B)
26 Clean Air Act Failure to Notify
27 (Count 6)

28 18 U.S.C. § 1001
False Statements
(Counts 7 - 11)

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times relevant to this indictment:

Background Information

1. Hanson Industries, Inc. (“Hanson Industries”) was a property management company located in Spokane, Washington which owns a legacy industrial property that had previously been operated as a metal production facility (the “Hanson property”). Based on the property records for Spokane County, the Hanson property does not have a mailing address, but is immediately adjacent to the property located at 2425 East Magnesium Road, Spokane, Washington in the Eastern District of Washington.

2. Building 5, also known as the "Wood Warehouse," which was constructed in approximately 1941, is one of several buildings located on the Hanson property in the Eastern District of Washington.

3. Defendant, ALEXANDER BORYS MISCHENKO, owns and operates Buck Creek Sales, which is registered as an assumed business name with the Idaho Secretary of State.

The Clean Air Act

4. In 1971, asbestos was listed as a hazardous air pollutant under the Clean Air Act. 36 Fed. Reg. 5931 (Mar. 31, 1971); 42 U.S.C. § 7412 (b)(1); 40 C.F.R. § 61.01(a). An air pollutant is hazardous if it causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality, or an increase in serious irreversible or incapacitating reversible illness. 42 U.S.C. § 7412(a)(1).

5. Congress further found that “medical science has not established any minimum level of exposure to asbestos fibers which is considered safe to individuals exposed to the fibers.” 20 U.S.C. § 3601(a)(3). Because there is no

1 concentration that is considered safe, the United States Environmental Protection
2 Agency (“EPA”) has not established an “emissions” limit for asbestos. Instead,
3 EPA promulgated “work practice standards,” pursuant to 42 U.S.C. § 7412(h), for
4 renovation and demolition projects that direct how the material must be handled to
5 minimize or eliminate the release of asbestos fibers into the air. These standards,
6 known as the work practice and waste disposal standards are set forth in 40 C.F.R.
7 §§ 61.145 and 61.150, respectively.

8 6. The asbestos work practice and waste disposal standards apply to
9 demolition and renovation activities involving regulated asbestos containing
10 material. 40 C.F.R. § 61.145. Asbestos containing material is considered
11 regulated if it is friable, or highly likely to become friable. Friable asbestos
12 material means any material that contains more than one (1) percent asbestos,
13 which, when dry, can be crumbled, pulverized, or reduced to powder by hand
14 pressure. 40 C.F.R. § 61.141

16 7. The asbestos work practice and waste disposal standards apply to any
17 owner or operator of a demolition or renovation activity where the combined
18 amount of regulated asbestos stripped, removed, dislodged, cut, drilled, or
19 similarly disturbed is at least 160 square feet on facility components other than
20 pipes, at least 260 linear feet on pipes, or at least 30 cubic feet. 40 C.F.R.
21 § 61.145(a)(4).

22 8. The Clean Air Act’s asbestos work practice and waste disposal
23 standards describe the appropriate procedures for the notification, safe handling,
24 stripping, removal and disposal of RACM during renovation or demolition activity.
25 These work practice and waste disposal standards require, in pertinent part, that:

27 a. Per 40 C.F.R. § 61.145(b), each owner or operator of a demolition or
28 renovation activity shall provide the EPA Administrator with written
notice at least ten (10) working days before asbestos stripping or

1 removal work or any other activity begins (such as site preparation
2 that would break up, dislodge or similarly disturb asbestos material);
3 b. Per 40 C.F.R. § 61.145(c)(2) & (3), all regulated asbestos must be
4 adequately wetted during cutting, disjoining, or stripping operations;
5 c. Per 40 C.F.R. § 61.145 (c)(6), all regulated asbestos that has been
6 removed or stripped must be kept adequately wet and remain wet until
7 collected and contained in preparation for disposal;
8 d. Per 40 C.F.R. § 61.145(c)(8), no regulated asbestos shall be stripped,
9 removed, or otherwise handled or disturbed at a facility unless at least
10 one on-site representative, such as a foreman or management-level
11 person or other authorized representative, trained in the provisions of
12 asbestos regulations, is present. Records of such training must be
13 posted and made available at the site;
14 e. Per 40 C.F.R. § 61.150(a)(1)(iii), after wetting, all asbestos-containing
15 waste materials must be sealed in leak-tight containers while wet; or,
16 put materials in leak-tight wrapping; and,
17 f. Per 40 C.F.R. § 61.150(b), all regulated asbestos-containing waste
18 material must be deposited as soon as practical by the waste generator
19 at an asbestos waste disposal site, meeting the requirements of 40
20 C.F.R. § 61.154, or at an EPA-approved site; and

21 9. The Spokane Regional Clean Air Agency (“SRCAA”), formerly
22 known as the Spokane County Air Pollution Control Authority, is a local air
23 agency that received delegated authority from the U.S. Environmental Protection
24 Agency, to implement and enforce the section of the Clean Air Act related to
25 hazardous air pollutants, 42 U.S.C. § 7412, including the asbestos program, within
26 the Spokane area. 66 Fed. Reg. 48211-01. However, notwithstanding this

1 delegation, EPA retained the ability and jurisdiction to enforce the requirements of
2 this section of the Clean Air Act.

3 *Asbestos Removal at the Wood Warehouse*

4 10. On or about October 9, 2017, Hanson Industries, Inc. and the
5 Defendant, ALEXANDER BORYS MISCHENKO, through Buck Creek Sales,
6 entered into a written agreement titled, “Agreement for Dismantling Wood
7 Warehouse.” Per the terms of the agreement, Hanson Industries agreed to pay
8 Buck Creek Sales \$36,150 to dismantle the “Wood Warehouse,” (a/k/a
9 Building 5), and salvage the wood. The agreement stated that the Defendant,
10 ALEXANDER BORYS MISCHENKO, would be personally present to oversee
11 and manage the project. The agreement also attached a breakdown of certain
12 anticipated costs for the project, including \$500 for performing an asbestos survey,
13 and \$300 to apply for and obtain a Clean Air Act permit from the Spokane
14 Regional Clean Air Agency (“SRCAA”) for the work.

15 11. On November 6, 2017, a certified inspector conducted an asbestos
16 survey of Building 5 for the Defendant, ALEXANDER BORYS MISCHENKO,
17 and Buck Creek Sales. The final report was completed and dated December 4,
18 2017. A copy of the final report was addressed to the Defendant, ALEXANDER
19 BORYS MISCHENKO, and sent to an address provided by him. The survey
20 report indicated that it was completed “to meet the requirements for asbestos
21 inspection and due diligence” for Clean Air Act standards and concluded that there
22 was approximately 2,600 linear feet of friable thermal systems insulation (“TSI”)
23 in the form of piping insulation, containing between 2% and 60% chrysotile
24 asbestos. TSI is a type of regulated asbestos that is applied to piping or other
25 structural components in order to prevent heat loss or gain and is known to contain
26 high levels of asbestos and to present a high risk of contamination due to its
27 friability. The report stated that, with respect to the TSI piping insulation as well
28 as the wood, the Defendant, ALEXANDER BORYS MISCHENKO, would be personally
present to oversee and manage the project.

1 as other regulated asbestos in Building 5 that the survey identified, "these materials
2 will require removal by a licensed asbestos contractor prior to any renovation or
3 demolition activity that would directly impact these materials."

4 12. In approximately January 2018, the Defendant, ALEXANDER
5 BORYS MISCHENKO, who is not a licensed asbestos contractor, and several
6 workers, none of whom were licensed or adequately trained in asbestos removal,
7 began work at Building 5. The Defendant, ALEXANDER BORYS
8 MISCHENKO, removed and directed the removal of the TSI from piping within
9 the building. During the removal process, a significant amount of TSI was
10 scattered across the floor of Building 5. The removed TSI was placed in 14 large
11 sacks, known as super sacks, and one unsealed wooden crate and transported to a
12 separate building on the Hanson property via a large telescoping forklift known as
13 a Sky Trak telehandler. The TSI on the floor, in the sacks, and in the wooden crate
14 was dry and friable, meaning it would easily crumble with hand pressure. At least
15 one of the bags was closed, but most were left open. None of the bags was leak
16 tight. The bags were also not labeled with warning labels, nor were they labeled
17 with the Defendant ALEXANDER BORYS MISCHENKO's name or the
18 renovation location, as required. Each one of these work practices was conducted
19 without the required notice to SRCAA and in violation of the applicable regulatory
20 work practice standards.

22 13. On approximately March 28, 2018, inspectors with SRCAA observed
23 renovation work taking place near 2425 East Magnesium Road in Spokane,
24 Washington. After contacting Hanson Industries, SRCAA was directed to the
25 Defendant, ALEXANDER BORYS MISCHENKO, with whom an SRCAA
26 inspector spoke on or about April 4, 2018. After the SRCAA inspector explained
27 to the Defendant, ALEXANDER BORYS MISCHENKO, that asbestos surveys
28 needed to be completed and that a notice of intent needed to have been filed for the

1 activity on site, the Defendant, ALEXANDER BORYS MISCHENKO, falsely
2 stated that the asbestos survey had concluded that Building 5 did not contain
3 asbestos.

4 14. On approximately April 6, 2018, in response to concerns identified by
5 the SRCAA inspectors who had observed the work and spoken with the Defendant,
6 ALEXANDER BORYS MISCHENKO, SRCAA performed an inspection at
7 Building 5 on the Hanson property. Upon entering the building, SRCAA
8 inspectors immediately observed a large amount of white powder covering a large
9 portion of the building's floor, as well as several large chunks of TSI. While
10 wearing respirators, the inspectors took a sample of the suspected TSI. Subsequent
11 analysis confirmed that the material contained between 35% and 40%
12 homogeneous chrysotile asbestos. During the inspection, the Defendant,
13 ALEXANDER BORYS MISCHENKO, falsely stated to SRCAA that he did not
14 touch the asbestos and had only been inside the building salvaging materials.

16 15. On approximately April 11, 2018, while at the Hanson property,
17 SRCAA inspectors again spoke with the Defendant, ALEXANDER BORYS
18 MISCHENKO, who falsely stated that he had not contacted the licensed inspection
19 company to perform the November 2017 asbestos survey and that he had not seen
20 a copy of it. When asked, the Defendant, ALEXANDER BORYS MISCHENKO,
21 falsely claimed that he did not know who removed the TSI from the pipes in
22 Building 5. The Defendant, ALEXANDER BORYS MISCHENKO, falsely stated
23 that the piping that he had observed and salvaged was "clean" and that it did not
24 contain any asbestos. SRCAA inspectors again observed and took photographs of
25 disturbed TSI on the floor of Building 5 and took samples of the TSI.

27 16. On approximately April 16, 2018, a certified asbestos contractor
28 conducted a second asbestos survey in Building 5. The survey report concluded
that there was TSI "scattered all around the floor of the building" as well as "Air

1 Cell TSI scattered on the floor of the building.” The contractor took samples of the
2 “significantly damaged” friable TSI, which subsequent laboratory analysis
3 confirmed contained between 30% and 45% of chrysotile asbestos. The contractor
4 also took samples of the “Air Cell TSI,” which subsequent laboratory analysis
5 confirmed contained between 10% and 70% chrysotile asbestos.

6 17. On approximately April 30, 2018, the Defendant, ALEXANDER
7 BORYS MISCHENKO, emailed Hanson Industries. Defendant ALEXANDER
8 BORYS MISCHENKO’s email confirmed that, contrary to his statements to
9 SRCAA, the Defendant, ALEXANDER BORYS MISCHENKO, was aware of the
10 November 2017 survey results and that the survey had found “pipe with asbestos
11 wrapped around it.” Defendant ALEXANDER BORYS MISCHENKO’s email
12 further stated that, contrary to his statements to SRCAA, he and his workers
13 “[c]leaned” the pipe by removing the asbestos and bagging it in “double layer extra
14 strong bags,” and then moved the asbestos to “a safe location at the far north
15 warehouse to be sent to a landfill outside of Spokane with the proper paper work
16 [sic].”

17 18. On or about May 1, 2018, a Special Agent with the U.S.
18 Environmental Protection Agency’s Criminal Investigation Division (“EPA CID”)
19 conducted a voluntary recorded interview with the Defendant, ALEXANDER
20 BORYS MISCHENKO, who admitted that, contrary to his prior statements to
21 SRCAA, he had removed the asbestos from the piping in Building 5. During the
22 interview, the Defendant, ALEXANDER BORYS MISCHENKO, admitted
23 receiving the November 2017 asbestos survey and asserted that the asbestos
24 abatement activity had occurred in early January 2018 and had taken
25 approximately one week, and provided statements regarding how the work was
26 accomplished. The Defendant, ALEXANDER BORYS MISCHENKO, admitted
27 that he was not a certified asbestos worker. During the interview, the Defendant,
28

1 ALEXANDER BORYS MISCHENKO, falsely stated that his son, who he claimed
 2 was certified to perform asbestos work in Montana, had participated in the
 3 Building 5 project. Defendant ALEXANDER BORYS further falsely denied that
 4 he was being paid for the work he had conducted at Building 5.

5 19. On or about May 4, 2018, field technicians from EPA's National
 6 Enforcement Investigations Center ("NEIC") took three individual samples from
 7 one of the super sacks on the Hanson property containing the asbestos-containing
 8 materials that the Defendant, ALEXANDER BORYS MISCHENKO, admitted to
 9 removing from the piping and placing in the sacks. Subsequent analysis
 10 determined that the samples contained 9%, 11%, and 41% chrysotile asbestos,
 11 respectively.

13 COUNTS 1 - 3

14 20. The allegations contained in paragraphs 1 through 19 are realleged
 15 and incorporated by reference as though fully set forth herein.

16 21. Beginning on a date unknown, but by on or about December 4, 2017
 17 and continuing until on or about May 4, 2018, in the Eastern District of
 18 Washington, the Defendant, ALEXANDER BORYS MISCHENKO, an owner or
 19 operator of the renovation activity, knowingly violated, and caused to be violated,
 20 the Clean Air Act asbestos work practice standards with regard to the renovation of
 21 Building 5 located adjacent to 2425 East Magnesium Road, Spokane, Washington,
 22 in that:

COUNT 1	The Defendant, ALEXANDER BORYS MISCHENKO, failed to adequately wet the regulated asbestos-containing materials during cutting, disjoining, and stripping operations, as required by 40 C.F.R. § 61.145(c)(2) & (3);
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COUNT 2	The Defendant, ALEXANDER BORYS MISCHENKO, failed to keep all regulated asbestos that had been removed and stripped adequately wet until collected and contained in preparation for disposal, as required by 40 C.F.R. § 61.145(c)(6);
COUNT 3	The Defendant, ALEXANDER BORYS MISCHENKO, failed to have an on-site representative trained in the provisions of asbestos regulations at the facility during asbestos stripping, removal, handling and disturbing operations, as required by 40 C.F.R. § 61.145(c)(8);

all in violation of 42 U.S.C. §§ 7412(h), 7413(c)(1), and 18 U.S.C. § 2.

COUNTS 4 - 5

22. The allegations contained in paragraphs 1 through 21 are realleged and incorporated by reference as though fully set forth herein.

23. Beginning on a date unknown, but by on or about December 4, 2017 and continuing until on or about May 4, 2018, in the Eastern District of Washington, the Defendant, ALEXANDER BORYS MISCHENKO, an owner or operator of the renovation activity, knowingly violated, and caused to be violated, the Clean Air Act asbestos waste disposal standards with regard to the renovation of Building 5 located adjacent to 2425 East Magnesium Road, Spokane, Washington, in that:

COUNT 4 The Defendant, ALEXANDER BORYS MISCHENKO, failed to adequately wet asbestos-containing waste materials and, after wetting, seal all such asbestos-containing waste materials in leak-tight containers while wet, as required by 40 C.F.R. § 61.150(a)(1)(iii);

1 COUNT 5 The Defendant, ALEXANDER BORYS MISCHENKO, failed to
2 deposit all regulated asbestos-containing waste material as soon as
3 practical at an EPA-approved site, as required by 40 C.F.R. §
4 61.150(b);
5

6 all in violation of 42 U.S.C. §§ 7412(h), 7413(c)(1), and 18 U.S.C. § 2.

7 COUNT 6

8 24. The allegations contained in paragraphs 1 through 23 are realleged
9 and incorporated by reference as though fully set forth herein.

10 25. Beginning on a date unknown, but by on or about December 2017 and
11 continuing until on or about May 4, 2018, in the Eastern District of Washington,
12 the Defendant, ALEXANDER BORYS MISCHENKO, an owner or operator of
13 the renovation activity, knowingly violated, and caused to be violated, the Clean
14 Air Act with regard to the renovation of Building 5 located adjacent to 2425 East
15 Magnesium Road, Spokane, Washington, in that the Defendant, an owner or
16 operator of a renovation activity involving approximately 2,600 linear feet of
17 regulated asbestos, engaged in such activity, while failing to submit notification to
18 SRCAA at least 10 days prior to the renovation activity, all in violation of 42
19 U.S.C. §§ 7412(h), 7413(c)(2)(B), and 18 U.S.C. § 2.

20 COUNTS 7 - 11

21 26. The factual allegations contained in paragraphs 1 through 25 are
22 realleged and incorporated by reference as though fully set forth herein.

23 27. Beginning on a date unknown, but by on or about April 4, 2018 and
24 continuing until on or about May 1, 2018, including on the specific dates noted
25 below, in the Eastern District of Washington and elsewhere, the Defendant,
26 ALEXANDER BORYS MISCHENKO, did willfully and knowingly make a
27 materially false, fictitious, and fraudulent statement and representation in a matter
28

1 within the jurisdiction of the executive branch of the Government of the United
2 States, when in truth and in fact, he knew all such statements to be false, when, to
3 wit:

4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	COUNT 7 On April 4, 2018	The Defendant, ALEXANDER BORYS MISCHENKO. falsely claimed to SRCAA inspectors that the asbestos survey had concluded that Building 5 did not contain asbestos when in fact the Defendant, ALEXANDER BORYS MISCHENKO, knew that the asbestos survey he had commissioned had concluded that Building 5 did in fact contain significant quantities of regulated asbestos;
	COUNT 8 On April 6, 2018	The Defendant, ALEXANDER BORYS MISCHENKO, falsely asserted to inspectors with SRCAA that he did not remove asbestos from Building 5 and did not know who did when in fact the Defendant, ALEXANDER BORYS MISCHENKO, knew, and later admitted, that he had removed asbestos from Building 5;

1	COUNT 9	On April 11, 2018	The Defendant, ALEXANDER BORYS MISCHENKO, falsely stated to inspectors with SRCAA that he had not contacted the licensed inspection company to perform the November 2017 asbestos survey and that he had not seen a copy of it when in fact the Defendant, ALEXANDER BORYS MISCHENKO, knew that he had commissioned the survey, had charged Hanson Properties for the survey, and that he had seen the survey;
13	COUNT 10	On May 1, 2018	The Defendant, ALEXANDER BORYS MISCHENKO, falsely told a Special Agent with the EPA CID that his son, who he claimed was certified to perform asbestos work in Montana, had participated in the Building 5 project when in fact the Defendant, ALEXANDER BORYS MISCHENKO, knew that his son did not participate in the Building 5 project and, at that time, was not a licensed asbestos abatement contractor;

1	COUNT 11	On May 1, 2018	The Defendant, ALEXANDER BORYS MISCHENKO, falsely told a Special Agent with the EPA CID that he was not being paid for the work he conducted in Building 5 when in fact the Defendant, ALEXANDER BORYS MISCHENKO, knew that he was being paid for the Building 5 work pursuant to a written contract between Hanson Properties and Defendant ALEXANDER BORYS MISCHENKO.
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12 all in violation of 18 U.S.C. § 1001(a)(2).

13 DATED this 8th day of December, 2020.

14
15 A TRUE BILL

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